

Rule 1007. Lists, Schedules, and Statements; Time Limits

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(a) LIST OF CREDITORS AND EQUITY SECURITY
HOLDERS.

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(4) Chapter 15 Case. Unless the court orders otherwise, a
foreign representative filing a petition for recognition under
chapter 15 shall file with the petition a list containing the name and
address of all administrators in foreign proceedings of the debtor,
all parties to any litigation in which the debtor is a party and that is
pending in the United States at the time of the filing of the petition,
and all entities against whom provisional relief is being sought
under § 1519 of the Code.

~~(4)~~ (5) Extension of Time. Any extension of time for the
filing of lists required by this subdivision may be granted only on
motion for cause shown and on notice to the United States trustee,
and to any trustee, committee elected pursuant to under § 705 or
appointed pursuant to under § 1102 of the Code, or any other party
as the court may direct.

COMMITTEE NOTE

The rule is amended to require that any foreign representative
filing a petition for recognition to commence a case under chapter

15, which was added to the Code in 2005, file a list of entities with whom the debtor is engaged in litigation in the United States. The foreign representative filing the petition for recognition also must list any entities against whom provisional relief is being sought as well as all administrators in foreign proceedings of the debtor. This should ensure that the entities most interested in the case, or their representatives, will receive notice of the petition under Rule 2002(q).

Other amendments are stylistic.

**Rule 1010. Service of Involuntary Petition and Summons;
~~Petition Commencing an Ancillary case For~~
Recognition of a Foreign Proceeding**

1 On the filing of an involuntary petition or a petition
2 ~~commencing a case ancillary to~~ for recognition of a foreign
3 proceeding the clerk shall forthwith issue a summons for service.
4 When an involuntary petition is filed, service shall be made on the
5 debtor. When a petition ~~commencing an ancillary case for~~
6 recognition of a foreign proceeding is filed, service shall be made
7 on the ~~parties against whom relief is sought pursuant to~~ debtor, any
8 entity against whom provisional relief is sought under § 1519 of
9 the Code, and on any other parties as the court may direct. The
10 summons shall be served with a copy of the petition in the manner
11 provided for service of a summons and complaint by Rule 7004(a)
12 or (b). If service cannot be so made, the court may order that the
13 summons and petition be served by mailing copies to the party's
14 last known address, and by a least one publication in a manner and

15 form directed by the court. The summons and petition may be
16 served on the party anywhere. Rule 7004 (e) and Rule 4 (l)
17 F.R.Civ.P. apply when service is made or attempted under this
18 rule.

COMMITTEE NOTE

The rule is amended to implement the 2005 amendments to the Bankruptcy Code, which repealed § 304 of the Code and replaced it with chapter 15 governing ancillary and other cross-border cases. Under that chapter, a foreign representative commences a case by filing a petition for recognition of a pending foreign proceeding. This amendment requires service of the summons and petition on the debtor and any entity against whom the representative is seeking provisional relief. Until the court enters a recognition order under § 1517, no stay is in effect unless the court enters some form of provisional relief under § 1519. Thus, there is no need to serve all creditors of the debtor upon filing the petition for recognition. Only those entities against whom specific provisional relief is sought need to be served. The rule also provides that the court may direct that service be made on additional entities as appropriate.¹

Rule 1011. Responsive Pleading or Motion in Involuntary and Ancillary Cross-Border Cases

1 (a) WHO MAY CONTEST PETITION. The debtor named in
2 an involuntary petition or a party in interest to a petition

¹ The proposed rule permits the court to require service on other proper entities. For example, the court may consider requiring service on all administrators in foreign proceedings of the debtor, as well as on all parties to litigation with the debtor in the United States. These groups will receive notice of the proceedings under proposed Rule 2002(q), so the Subcommittee concluded that they did not need to be listed in Rule 1010 and could be included by the court whenever it appeared necessary.

3 ~~commencing a case ancillary to a~~ for recognition of a foreign
4 proceeding may contest the petition. In the case of a petition
5 against a partnership under Rule 1004, a nonpetitioning general
6 partner, or a person who is alleged to be a general partner but
7 denies the allegation, may contest the petition.

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COMMITTEE NOTE

The rule is amended to reflect the 2005 amendments to the Bankruptcy Code, which repealed § 304 of the Code and added chapter 15. Section 304 covered cases ancillary to foreign proceedings, while chapter 15 of the Code governs ancillary and other cross-border cases and introduces the concept of a petition for recognition of a foreign proceeding.

Rule 2002. Notices to Creditors, Equity Security Holders, Administrators in Foreign Proceedings, Persons Against Whom Provisional Relief is Sought in Ancillary and Cross-Border Cases, United States, and United States Trustee

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2 (q) NOTICE OF PETITION FOR RECOGNITION OF
3 FOREIGN PROCEEDING AND OF COURT'S INTENTION TO
4 COMMUNICATE WITH FOREIGN COURTS AND FOREIGN
5 REPRESENTATIVES.

6 (1) Notice of Petition for Recognition. The clerk, or some
7 other person as the court may direct, shall forthwith give the
8 debtor, all administrators in foreign proceedings of the debtor, all

9 entities against whom provisional relief is being sought under
10 § 1519 of the Code, all parties to any litigation in which the debtor
11 is a party and that is pending in the United States at the time of the
12 filing of the petition, and such other entities as the court may
13 direct, notice by mail of the filing of a petition for recognition of a
14 foreign proceeding.

15 (2) Notice of Court's Intention to Communicate with
16 Foreign Courts and Foreign Representatives. The clerk, or some
17 other person as the court may direct, shall give the debtor, all
18 administrators in foreign proceedings of the debtor, all entities
19 against whom provisional relief is being sought under § 1519 of
20 the Code, all parties to any litigation in which the debtor is a party
21 and that is pending in the United States at the time of the filing of
22 the petition, and such other entities as the court may direct, notice
23 by mail of the court's intention to communicate with a foreign
24 court or foreign representative as prescribed by Rule 5012.².

COMMITTEE NOTE

² The Committee might also consider requiring that notice be given to the 20 largest unsecured creditors in the case. See Rule 1007(d). This would provide some protection for creditors generally while avoiding the need to inform potentially thousands of creditors (and incur those specific costs) when all that is being initiated is a case ancillary to a foreign proceeding. If the Committee decides to include a requirement that notice be given to the creditors holding the 20 largest claims, then Rule 1007(a)(4) would have to be amended to require the entity filing the petition for recognition to include a list of these creditors along with the petition.

Subdivision (q) is added to require that notice be given to the debtor, all administrators in foreign proceedings of the debtor, entities against whom provisional relief is sought, and entities with whom the debtor is engaged in litigation at the time of the commencement of the case that a petition for recognition of a foreign proceeding has been filed. There is no need at this stage of the proceedings to provide notice to all creditors. If the foreign representative should take action to commence a case under another chapter of the Code, the rules governing those proceedings will operate to provide that notice is given to all creditors.

The rule also requires notice to those entities of the court's intention to communicate with a foreign court or foreign representative under Rule 5012.

Rule 2015. Duty to Keep Records, Make Reports, and Give Notice of Case or Change of Status

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(d) FOREIGN REPRESENTATIVE. In a case in which the court has granted recognition of a foreign proceeding under chapter 15, the foreign representative shall file any notice required under § 1518 of the Code within 15 days after the date when the representative becomes aware of the subsequent information.

~~(d)~~ (e) TRANSMISSION OF REPORTS. (text of former subdivision (d) becomes (e)).

COMMITTEE NOTE

The rule is amended to fix the time for the filing of notices under § 1519 which was added to the Code in 2005. Former subdivision (d) is renumbered as subdivision (e).

RULE 1002.1 and the Commencement of a Voluntary or Involuntary Case by the Foreign Representative of a Recognized Foreign Debtor

There are two proposed alternatives for Rule 1002.1 set out below for the Committee's consideration. Section 1511 of the Code provides in subsection (a) that the foreign representative of a debtor in a case in which the court has granted recognition may commence an involuntary case under § 303, or, if the foreign proceeding is a foreign main proceeding, a voluntary case under either §301 or 302. Subsection (b) of that section, however, provides that "the court where the petition for recognition has been filed must be advised of the foreign representative's intent to commence a case under subsection (a) prior to such commencement." The Subcommittee discussed the need for a rule to implement this provision, and it could not reach a consensus on the issue.

The section as written is susceptible to more than one interpretation. For example, one could read the statute as requiring only a notification to the court of the foreign representative's intention to commence a case under another chapter of the Code. The court would have no authority to limit or constrain the foreign representative's actions. At most, the filing of a petition without prior notification would be evaluated in a manner similar to the scrutiny of a chapter 11 filing by a corporation where the authority of the filing person is in question. The filing is essentially treated as effective until the court has an opportunity, if raised by a party in interest, to evaluate the authority of the person signing the petition and schedules. The same could be done for these cases. As a practical matter, if the court has no power to restrict or deny the representative's authority to file under another chapter, there may be no harm in a representative failing to notify the court in a timely fashion. If problems thereafter arise, the court can consider them at a later date and the case would still be effective. If the representative fails to respond adequately to court requests for information or action, the court can dismiss the case entirely for failing to follow its orders. Alternative A below adopts this interpretation of the statute.

A second interpretation of the language of the statute would be that there must be some purpose for the pre-notification requirement, and that purpose would be for the court to evaluate the proposed action. Furthermore, for the court to have a realistic opportunity to make the evaluation, it needs the input of interested parties who can raise and advocate the relevant issues. Therefore, the statement of intention should be filed in a manner that permits the court to give those parties notice and an opportunity to be heard on the issue. Alternative B below adopts this interpretation of the statute and provides for notice to the court and to parties in interest prior to the commencement of another bankruptcy case.

A third alternative follows from the first interpretation of the statute. That alternative is to have no rule promulgated to implement the statute. The argument is that the statute simply requires notice to the court and does not authorize the court to take any action in regards to the matter. I have spoken with Dan Glosband since our meeting, and he indicated that the § 1511 notification requirement is intended to support the goals of § 1529 of the Code. That section

specifically requires the “chapter 15” court to “seek cooperation and coordination” if there is both a foreign proceeding and “a case under another chapter of this title” pending concurrently. Therefore, the “chapter 15 court” needs to be informed that the foreign representative is about to commence a “chapter case” so that the “chapter 15 court” can begin to make whatever arrangements may be necessary to coordinate the proceedings.

Given this purpose for § 1511, it would seem that either the first or third alternatives would be preferable. On one hand, the statute could stand on its own and not require any particular rule to implement its provisions. A person attempting to comply with the statute will know that the notice must be filed with the court that recognized the foreign proceeding before filing the voluntary or involuntary case. There would be no rule directing the notice to include the identity of the debtor and the court in which the voluntary or involuntary petition will be filed, but it is likely that the foreign representative will include at least that information in the notice. On the other hand, it may be helpful to have a rule that establishes a deadline for filing the notice and sets out the information that must be included in the notice to the court.

ALTERNATIVE A OF RULE 1002.1

Rule 1002.1 Commencement of a Case Under §§ 301, 302, or 303 by a Foreign Representative

1 Unless the court orders otherwise, at least 10 days before a
2 foreign representative commences a case under § 301, 302, or 303,
3 the foreign representative shall file with the court that granted
4 recognition a notice stating the representative’s intention to
5 commence a case. The notice shall identify the debtor and the
6 court in which the case will be commenced.

COMMITTEE NOTE

This rule is added to implement § 1511 which was added to the Code in 2005. That section requires the foreign representative to advise the court that granted recognition of the foreign proceeding that the representative intends to commence a case under another chapter of the Code. The court can shorten the time for the representative to advise the court of an intention to commence a case under § 301, 302, or 303 when the circumstances make a shorter notification period appropriate. Section 1511 requires the

representative to notify the court so that the court can meet its obligations under § 1529 of the Code to seek cooperation and coordination between the foreign court and the court in which a case under a chapter other than chapter 15 is pending. No process is established either to provide notice to other parties in interest or for the court to review and approve the actions of the foreign representative. The rule also sets out the information that the representative must include in the notice to the court.

ALTERNATIVE B OF RULE 1002.1

Rule 1002.1 Commencement of a Case Under §§ 301, 302, or 303 by a Foreign Representative

1 Unless the court orders otherwise, at least 10 days before a
2 foreign representative commences a case under § 301, 302, or 303,
3 the foreign representative shall file with the court that granted
4 recognition a notice stating the representative's intention to
5 commence a case. The notice shall identify the debtor and the
6 court in which the case will be commenced. The clerk, or some
7 other person as the court may direct, shall give notice by mail of
8 the foreign representative's intention to commence the case in the
manner provided by Rule 2002(q).

COMMITTEE NOTE

This rule is added to implement § 1511 which was added to the Code in 2005. That provision requires the foreign representative to advise the court that granted recognition of the foreign proceeding that the representative intends to commence a case under another chapter of the Code. Interested parties can then be notified of the representative's intentions and can take appropriate action in that court. The rule also sets out the information that the representative must include in the notice to the court.

If the Committee chooses Alternative B of Rule 1002.1, notice of the foreign representative's intention to commence a voluntary or involuntary case will be sent to a number of entities. That notice should be treated identically to the notices of the filing of the petition for recognition and the notice of the court's intention to communicate with a foreign court or representative. Therefore, if Alternative B is selected, Rule 2002(q) should be amended to add the notice of intent to file a case under § 301, 302, or 303 to the list of notices governed by that provision. The revised Rule 2002(q) that includes the Rule 1002.1 notice follows.

Rule 2002. Notices to Creditors, Equity Security Holders, Administrators in Foreign Proceedings, Persons Against Whom Provisional Relief is Sought in Ancillary and Cross-Border Cases, United States, and United States Trustee

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(q) NOTICES OF PETITION FOR RECOGNITION OF FOREIGN PROCEEDING, OF COURT'S INTENTION TO COMMUNICATE WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES, AND OF FOREIGN REPRESENTATIVE'S INTENTION TO COMMENCE A CASE UNDER § 301, 302, OR 303.

(1) Notice of Petition for Recognition. The clerk, or some other person as the court may direct, shall forthwith give the debtor, all administrators in foreign proceedings of the debtor, all entities against whom provisional relief is being sought under § 1519 of the Code, all parties to any litigation in which the debtor is a party and that is pending in the United States at the time of the filing of the petition, and such other entities as the court may direct, notice by mail of the filing of a petition for recognition of a foreign proceeding.

(2) Notice of Court's Intention to Communicate with Foreign Courts and Foreign Representatives. The clerk, or some other person as the court may direct,

16 shall give the debtor, all administrators in foreign proceedings of the debtor, all
17 entities against whom provisional relief is being sought under § 1519 of the Code,
18 all parties to any litigation in which the debtor is a party and that is pending in the
19 United States at the time of the filing of the petition, and such other entities as the
20 court may direct, notice by mail of the court's intention to communicate with a
21 foreign court or foreign representative as prescribed by Rule 5012.³

22 (3) *Notice of Foreign Representative's Intention to Commence a Case*
23 *Under § 301, 302, or 303.* The clerk, or some other person as the court may
24 direct, shall forthwith give the debtor, all administrators in foreign proceedings of
25 the debtor, all entities against whom provisional relief is being sought under
26 § 1519 of the Code, all parties to any litigation in which the debtor is a party and
27 that is pending in the United States at the time of the filing of the petition, and
28 such other entities as the court may direct, notice by mail of the intention of a
29 foreign representative to commence a case under § 301, 302, or 303 as prescribed
30 by Rule 1002.1.

COMMITTEE NOTE

Subdivision (q) is added to the rule to require that notice be given to the debtor, all administrators in foreign proceedings of the debtor, entities against

³ The Committee might also consider requiring that notice be given to the 20 largest unsecured creditors in the case. See Rule 1007(d). This would provide some protection for creditors generally while avoiding the need to inform potentially thousands of creditors (and incur those specific costs) when all that is being initiated is a case ancillary to a foreign proceeding. If the Committee decides to include a requirement that notice be given to the creditors holding the 20 largest claims, then Rule 1007(a)(4) would have to be amended to require the entity filing the petition for recognition to include a list of these creditors along with the petition.

whom provisional relief is sought, and entities with whom the debtor is engaged in litigation at the time of the commencement of the case that a petition for recognition of a foreign proceeding has been filed. There is no need at this stage of the proceedings to provide notice to all creditors. If the foreign representative should take action to commence a case under another chapter of the Code, the rules governing those proceedings will operate to provide that notice is given to all creditors.

The rule also requires notice to those entities of the court's intention to communicate with a foreign court or foreign representative under Rule 5012, and the intention of a foreign representative to commence a case under § 301, 302, or 303 of the Code.

Rule 5012. Communication and Cooperation With Foreign Courts and Foreign Representatives

1 Except for communications for scheduling and administrative
2 purposes, the court in any case commenced by a foreign
3 representative shall give at least 20 days notice of its intent to
4 communicate with a foreign court or a foreign representative. The
5 notice shall identify the subject of the anticipated communication
6 and shall be given in the manner provided by Rule 2002(q). Any
7 entity that wishes to participate in the communication shall notify
8 the court of its intention not later than 5 days before the scheduled
9 communication.

COMMITTEE NOTE

This rule implements § 1525 which was added to the Code in 2005. The rule provides an opportunity for parties in the case to take appropriate action prior to the communication between courts or between the court and a foreign representative to establish procedures for the manner of the communication and the right to participate in the communication. Participation in the

communication includes both active and passive participation. Parties wishing to participate must notify the court at least 5 days before the hearing so that ample time exists to make arrangements necessary to permit the participation.